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June 9, 2014

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA FACSIMILE: (202) 219-3923

Re: **MUR 6820 – Response to Complaint from Earl LeRoy (Buddy) Carter, Buddy Carter for Congress, Carlton Hodges in his official capacity as Treasurer, and Friends of Buddy Carter for Senate, Mark Smith in his official capacity as Treasurer.**

Dear Mr. Jordan:

On behalf of our clients, Buddy Carter, Buddy Carter for Congress and Carlton Hodges in his official capacity as Treasurer, and Friends of Buddy Carter for Senate and Mark Smith in his official capacity as Treasurer, we respond to the Complaint filed by Ryan M. Reynolds, campaign manager for the Bob Johnson for Congress Committee, dated May 14, 2014. The Complaint in this matter alleges that Buddy Carter for Congress violated the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission ("Commission") regulations by raising and spending funds that do not comply with the Act. The Complaint was obviously filed for political gain by Carter's primary opponent, Bob Johnson, in the days leading up to the May 20th congressional primary. Carter was the clear frontrunner in the six person primary, receiving over 36% of the vote compared to just 22.7% by Johnson, and Carter is the favorite in the runoff election against Johnson. The Complaint, which was evidently a last ditch effort by Johnson to gain ground against Carter, is speculative, legally flawed, and should be immediately dismissed, because on its face it fails to provide any evidence of a violation of the Act.

Analysis

Buddy Carter is a Republican candidate for Congress for Georgia's 1st Congressional District. Carter filed his FEC Form 2, Statement of Candidacy and FEC Form 1, Statement of Organization on April 23, 2013. Buddy Carter for Congress is his authorized campaign

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committee ("Federal Committee"). Buddy Carter is also currently a state officeholder having served as State Senator from the 1st Senate District of Georgia since 2010. Friends of Buddy Carter for Senate is his state campaign committee ("State Committee"). Carter is not a candidate for re-election to the State Senate.

Acceptance of Contributions by Friends of Buddy Carter for Senate

The Complaint erroneously alleges that Carter violated the Act because the State Committee received contributions after Carter became a candidate for federal office. In the seven months following Carter's announcement for Congress, the State Committee sporadically received four contributions totaling \$3,250. These contributions, however, were not solicited by Carter or the State Committee. Under Georgia law, members of the legislature are prohibited from soliciting contributions during the legislative session. In 2013, the legislative session began in early January 2013 and adjourned at the end of March 2013. Thus, Carter and the State Committee were prohibited from soliciting contributions during that period of time, and had a policy of non-solicitation during that time-period in order to remain in compliance with state law. Although theoretically Carter would have been permitted to solicit contributions for the State Committee during the few weeks between adjournment and the date he became a candidate for federal office, he did not do so and has not solicited contributions for the State Committee since becoming a federal candidate.

Federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates, may not raise or spend funds in connection with an election for Federal office unless the funds are subject to the Act's limitations, prohibitions, and reporting requirements. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. Moreover, Federal candidates may not raise or spend funds in connection with any election other than an election for Federal office unless the funds are raised within the Act's contribution limits and are not from prohibited sources. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. § 300.62.

Carter has served in the State Senate since 2010 and was planning to run for re-election until he announced his candidacy for federal office. Thus, it is understandable that the State Committee would receive unsolicited contributions after the legislative session. Carter was not actively raising these contributions, and they have not been spent in connection with any election or for any public communication. The total amount received is *de minimis*. As such, we request that the Commission find no reason to believe Carter or the State Committee violated the Act, or at worst, in light of the *de minimis* amount in question, dismiss as a matter of prosecutorial discretion.

Payments by the State Committee for Committee Staff

The Complaint further alleges that Carter used nonfederal funds from the State Committee to pay Federal Committee staff. Although Carter is a Federal candidate he is still serving as a State Senator for the 1st Senate District. As such, the State Committee must

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continue to employ staff to assist with State Senate obligations. Sarah Vardian serves as an administrative assistant and Phillip Fordham served as a travel assistant to Carter and the State Committee. These individuals assist with official duties, such as drafting letters to constituents for Carter's signature, constituent interaction, and research.¹ After Carter announced his candidacy, and as is commonplace when a candidate transitions from one campaign to another, these individuals began performing administrative duties for the new Federal Committee. They are compensated solely by the Federal Committee for those services performed for the Federal Committee. Both Vardian and Fordham have been consistently instructed to keep their Federal Committee duties separate from State Committee duties, and hourly logs were kept to indicate how many hours were worked for each entity during the relevant pay period.

David Simons of Simons & Associates is a long time consultant to the State Committee. He has been on retainer for several years for approximately \$500 per quarter (\$2,000/year), and remains on retainer pursuant to their long-standing agreement. In late 2013, Simons performed a small amount of work for the Federal Committee, including printing invitations for which he was paid \$1,812.34 by the Federal Committee. As with Vardian and Fordham, the activities Simons performs for the State Committee and Federal Committee are carefully segregated, and, as a result he is compensated by the appropriate committee for the respective activities.

As stated above, Federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates, may not raise or spend funds in connection with an election for Federal office unless the funds are subject to the Act's limitations, prohibitions, and reporting requirements. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. Moreover, Federal candidates may not raise or spend funds in connection with any election other than an election for Federal office unless the funds are raised within the Act's contribution limits and are not from prohibited sources. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R. § 300.62. However, the Commission has stated that "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of Section 441i(e)." See Advisory Opinion 2003-20 (Reyes) at 2; see also AO 2009-26 (Coulson).

Carter is still a State Senator and must continue to perform official duties. Moreover, the State Committee must comply with the administrative filing requirements of Georgia law. The administrative and official duties Vardian and Fordham perform on behalf of the State Committee are not in connection with a federal or nonfederal election. Similarly, the consulting duties performed by Simons with respect to the State Committee are not in connection with a federal or non-federal election. Moreover, the State Committee has not paid for services performed for the Federal Committee or vice versa. Committee staff are very careful to track the time spent on behalf of each Committee, and they are compensated accordingly. Thus, the Commission should find no reason to believe Carter, the State Committee, or the Federal Committee violated the Act by making or accepting prohibited contributions in the form of payments by the State Committee.

¹ Under Georgia law, state officeholders are permitted to use campaign funds to defray costs associated with official duties. O.C.G.A. § 21-5-33.

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The Congressional Committee May Receive a \$1,000 Contribution from the State Committee

Finally, the Complaint alleges that a \$1,000 contribution from the State Committee to the Federal Committee violated the Act. Complainant is simply wrong. Federal committees are permitted to accept contributions of up to \$1,000 from unregistered organizations, such as state political committees, so long as the unregistered group can demonstrate through reasonable accounting system that it has sufficient federally acceptable funds to cover the amount of the contribution at the time it was made.

At the time the contribution was made, the State Committee's cash on hand was over \$30,000. Of this \$30,000, there were sufficient funds from individuals and in amounts permitted under the Act to cover the \$1,000 contribution to the Federal Committee. As such, the Commission should find no reason to believe Carter, the State Committee and the Federal Committee violated the Act by making and accepting the \$1,000 contribution.

Conclusion

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific fact, which if proven true, would constitute a violation of the Act. Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith, and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence.

Carter and the State and Federal Committees have at all times complied with the provisions of the Act. The Complaint draws erroneous legal conclusions based purely on politically motivated speculation. We therefore respectfully request that the Commission find no reason to believe Carter, the State Committee and the Federal Committee violated the Act, and immediately dismiss the Complaint.

Respectfully submitted,



Charles R. Spies
Counsel to Buddy Carter, et al.

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